

# SENATE BILL REPORT

## SB 5735

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, February 8, 2007

**Title:** An act relating to the regulation of construction contractors.

**Brief Description:** Modifying provisions regulating contractors.

**Sponsors:** Senators Kohl-Welles, Clements, Franklin, Keiser and Parlette; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 1/18/07, 2/08/07 [DPS].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5735 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Clements, Ranking Minority Member; Franklin, Hewitt, Holmquist and Prentice.

**Staff:** Jennifer Strus (786-7316)

**Background:** Contractors are persons and entities in the business of improving property for others. A "general" contractor is a contractor who uses more than two unrelated building trades or crafts in performing work. All other contractors are called contractors or "specialty" contractors.

It is a misdemeanor to subcontract with or employ an unregistered contractor.

The Department of Labor & Industries (L&I) must suspend an active registration if L&I has notice that the registrant is a sole proprietor, principal, or officer of a registered contractor that has an unsatisfied final judgment against it.

Every applicant for contractor registration must file with L&I a surety bond in the amount of \$12,000 if the applicant is a general contractor or \$6,000 if the applicant is a specialty contractor. Any person, firm, or corporation having a claim against a contractor may sue the bond or security. If the claimant in such a suit is a residential homeowner, the lawsuit must be commenced within two years from the date the contract work was substantially completed or abandoned. A suit against the bond or security brought by anyone else must be commenced within one year from the date labor was performed and benefits accrued, taxes and

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contributions owing to the state became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned.

A contractor who has been cited by L&I has 30 days within which to notify L&I that he or she contests the citation.

L&I may inspect and investigate job sites at which a contractor bid or is presently working to determine whether the contractor is properly registered or there has been a violation of RCW 18.27.200.

It is a misdemeanor for a contractor to not respond to a notice of infraction. In infraction cases conducted under RCW 34.05 (Administrative Procedures Act), L&I has the burden of proving by a preponderance of the evidence that the infraction occurred.

**Summary of Bill:** The definition of "contractor" is amended to include developers, tree service providers, cabinet installers and construction consultants. The term "general contractor" includes a contractor whose business operations require the use of more than one building trade or craft on a single job or project or under a single building permit. The term also includes one who superintends work falling within the definition of "contractor."

A "specialty contractor" may only subcontract work to others within its own specialty.

Persons or entities who offer to sell their property without occupying or using it for more than one year from the date the work on the structure was substantially completed or abandoned is considered a contractor and must register with L&I.

It is a gross misdemeanor to subcontract with or employ an unregistered contractor.

L&I may suspend the active registration of a contractor if L&I determines that an owner, principal, or officer of the registrant was a previous owner, principal, or officer of a previous entity that has an unsatisfied final judgment against it.

Any person who has an unsatisfied judgment against a contractor who has posted security other than a surety bond, and that security has not been tendered to the court, may execute upon the security by serving upon L&I a certified copy of the final judgment within 10 days of the entry of the judgment. Once L&I receives a copy of the final judgment, it must pay the person, from the security, the amount of the judgment.

At the end of the two-year time period for filing an action against the bond or security, if no homeowner has provided L&I with a copy of the summons and complaint against the bond or security, the reserved amount may be used to pay unsatisfied judgments to claimants other than residential homeowners. The priority of payment is the order of receipt of the claims. L&I must receive the requests for payment within 60 days of the expiration of the two-year statute of limitations period.

Within 10 days of the resolution of a suit against the bond, the prevailing party must provide L&I with a certified copy of the judgment or settlement document, whichever applies. If the prevailing party fails to provide these documents within the time limits, the party is subject to a penalty of not less than \$250.

No contractor or subcontractor can maintain a court action for collection of payment unless he or she was duly registered as a contractor at the time the work was performed. A contractor violates the contractor registration statute if he or she subcontracts with or hires an unregistered contractor.

Contractors and subcontractors must keep a copy of the signed disclosure statement for three years.

L&I has authority to seek an administrative warrant authorizing access to any job site at which a contractor bid or is presently working. The L&I director may issue a subpoena to force the production of a registered or unregistered contractor's documents concerning business transactions between a contractor and the contractor's customers, suppliers, or subcontractors.

Any contractor cited by L&I has 90 days after receiving the citation to contest it. Contractors wishing to contest a notice of infraction issued by L&I must post a \$200 appeal bond, which will be returned to them if they prevail in the appeal. If the contractor does not prevail, L&I must apply the \$200 to the payment of the expenses of the appeal.

In contractor's notice of infraction cases, the burden of proof is on the contractor to establish by a preponderance of the evidence that the infraction did not occur.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development):** A specialty contractor may subcontract with a contractor outside his specialty but only for incidental work. L&I may triple a contractor's bond if the contractor has three final judgments filed against him or her for construction work within a five year period. Registration requirements do not apply to a person performing contractor work for the purpose of selling or leasing property he or she has owned for less than 12 months. Before L&I can obtain a subpoena, L&I must have reason to believe there is a violation of the registration statutes. The information L&I can obtain through a subpoena is a list of contractors working on the property, copies of contracts between the contractors and the subcontractors and any other information needed to enforce RCW 18.27. The subpoena may be issued only if L&I has first asked the contractor for the information and been refused. In an infraction case, the burden of proof is on L&I to prove that an infraction has occurred unless the infraction is against an unregistered contractor in which case that unregistered contractor bears the burden of proving the infraction did not occur.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The theory of the bill is to ensure that people doing contracting work are registered contractors. It is a consumer protection issue. Currently, L&I can triple the bond for bad actors; however, L&I does not always know when judgments have been entered against contractors so this bill would assist them in obtaining that information.

OTHER: There are concerns about the section of the bill in which the burden of proof in infraction cases is switched from L&I to the contractor. This is unfair. There are also concerns about the definition of "specialty contractor" being changed and the restriction that specialty contractors cannot contract outside their specialty. There is uncertainty about what is meant by the term "construction consultant." It is a mistake to include "developers" in the definition of contractor because these folks never work on the building portion of the job.

**Persons Testifying:** PRO: Patrick Woods, Department of Labor and Industries; Amy Brackenbury, Building Industry Association of Washington; Joe Schwab, HCS Construction.

OTHER: Rick Slunaker, Associated General Contractors; Kathleen Collins, Sheet Metal and Air Conditioning Contractors; Gary Smith, Independent Business Association; Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association.